

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUSSELL ANDERS,

Defendant.

CASE NO. 2:23-cr-00046-TL

ORDER ON MOTION TO  
REVOKE DETENTION ORDER

This matter comes before the Court on Mr. Anders's Motion to Revoke the Detention Order (Dkt. No. 19) ("Motion to Revoke"), appealing the April 4, 2023, detention order (Dkt. No. 15). Having conducted a *de novo* review and considered: (1) the Indictment (Dkt. No. 1); (2) the original Pretrial Report (Dkt. No. 7) and four Supplemental Pretrial Reports (Dkt. Nos. 12, 24, 27, 30); (3) the Government's motion for detention (Dkt. No. 10); (4) the audio recording of the April 4 detention hearing (Dkt. No. 20); (5) the Government's response to the Motion to Revoke (Dkt. No. 21); (6) the Parties' representations at oral argument (Dkt. No. 28);

(7) the Parties’ supplemental briefing (Dkt. Nos. 29, 31); and (8) the relevant record, the Court GRANTS the Motion to Revoke and RELEASES Mr. Anders with conditions.

### I. BACKGROUND

Mr. Anders faces two charges related to the production and possession of sexually explicit content involving children. On March 29, 2023, a grand jury indicted Mr. Anders on one count of Production of Child Pornography, 18 U.S.C. §§ 2251(a) and 2251(e), and one count of Possession of Depictions of Minors Engaged in Sexually Explicit Content, 18 U.S.C. §§ 2252(a)(4)(B) and 2252(b)(2). *See* Dkt. No. 1. Upon his counsel learning of the indictment, Mr. Anders arranged to surrender himself on March 31, which he did. Dkt. No. 19 at 3. The Government moved for detention, arguing that Mr. Anders should be detained to ensure the safety of any other person and the community. Dkt. No. 10 at 1–2; *see* 18 U.S.C. § 3142(f)(1)(A) (authorizing a detention hearing “in a case that involves . . . a crime of violence”).

Prior to the detention hearing, Pretrial Services filed two reports. Dkt. Nos. 7, 12. In its original report, Pretrial Services recommended that Mr. Anders be released under a variety of conditions. Dkt. No. 7 at 7–8. In its first supplemental report, however, Pretrial explored the suitability of Mr. Anders’s current address and three proposed alternative addresses as locations where Mr. Anders could reside pending trial. Dkt. No. 12 at 2–5. Finding no address suitable, Pretrial Services recommended that Mr. Anders be detained. *Id.* at 6–7. At the April 4 detention hearing, the magistrate judge ruled that Mr. Anders be detained on the basis of both nonappearance and safety concerns. Dkt. No. 15 at 2.

Following the detention hearing, Mr. Anders filed the instant Motion to Revoke, which the Government opposes. Dkt. Nos. 19, 21; *see* 18 U.S.C. § 3145(b). In response to the Parties’ briefing, the Court directed Pretrial Services to conduct a supplemental investigation to aid the Court in its review of the motion. Dkt. No. 22. The Court sought additional information

1 regarding the suitability of Mr. Anders's mother's home as a residence and allegations by the  
2 Government that Mr. Anders had included "inaccuracies and misleading statements" in his  
3 motion. *Id.*; Dkt. No. 21 at 7. Pretrial Services filed the results of that investigation as a Second  
4 Supplemental Report in which it maintained its recommendation of detention. Dkt. No. 24 at 8.

5 On June 7, the Court held a hearing on the Motion to Revoke. Dkt. No. 28. Prior to the  
6 hearing, Pretrial Services filed a Third Supplemental Report in which it changed its  
7 recommendation back to release with conditions. Dkt. No. 27 at 5–6. The impetus for the change  
8 appears to be that Mr. Anders was accepted to reside at House of Mercy, a supportive housing  
9 program in Spokane, Washington. *Id.* at 2; *see also* Dkt. No. 29 at 7–13. In response to concerns  
10 expressed by the Court at the June 7 motion hearing, Pretrial Services later filed a Fourth  
11 Supplemental Report in which it provided additional information from the Eastern District of  
12 Washington about the House of Mercy and tools for monitoring Mr. Anders. Dkt. No. 30 at 2.  
13 Pretrial Services maintains its recommendation of release with conditions. *Id.* at 5–6.

## 14 II. LEGAL STANDARD

### 15 A. Standard of Review

16 A person who is ordered detained by a magistrate judge "may file, with the court having  
17 original jurisdiction over the offense, a motion for revocation or amendment of the order." 18  
18 U.S.C. § 3145(b). A district court reviews the detention order *de novo*. *United States v. Koenig*,  
19 912 F.2d 1190, 1191–93 (9th Cir. 1990).

### 20 B. Presumption of Detention

21 Under the Bail Reform Act ("the Act"), 18 U.S.C. § 3141, *et seq.*, where a court finds  
22 probable cause that a defendant has committed certain types of offenses, including "an offense  
23 involving a minor victim" under certain enumerated statutes, there is a presumption of detention.  
24 18 U.S.C. § 3142(e)(3)(E). Although the Ninth Circuit has not ruled on the issue, almost every

1 Circuit has held that an indictment is sufficient to trigger the presumption. *See, e.g., United States*  
2 *v. Smith*, 79 F.3d 1208, 1210 (D.C. Cir. 1996); *United States v. Stricklin*, 932 F.2d 1353, 1355  
3 (10th Cir. 1991); *United States v. Contreras*, 776 F.2d 51, 55 (2d Cir. 1985); *cf. Kaley v. United*  
4 *States*, 571 U.S. 320, 328 (2014) (holding that a proper indictment “conclusively determines the  
5 existence of probable cause” (quoting *Gerstein v. Pugh*, 420 U.S. 103, 117 n.19 (1975))).

6       However, the presumption is subject to rebuttal by a defendant. 18 U.S.C. § 3142(e)(3).  
7 To rebut the presumption, a defendant need only produce “some evidence” that there are  
8 conditions that would reasonably assure his appearance and community safety. *United States v.*  
9 *Rhule*, No. C20-0105, 2020 WL 5984072, at \*3 (W.D. Wash. Oct. 8, 2020) (quoting *United*  
10 *States v. Jessup*, 757 F.2d 378, 384 (1st Cir. 1985), *abrogated on other grounds by United States*  
11 *v. O’Brien*, 895 F.2d 810, 812–14 (1st Cir. 1990)); *see United States v. Stone*, 608 F.3d 939, 945  
12 (6th Cir. 2010) (“Although a defendant’s burden of production ‘is not heavy,’ he must introduce  
13 at least some evidence.” (quoting *United States v. Stricklin*, 932 F.2d 1353, 1355 (10th Cir.  
14 1991))); *United States v. Rodriguez*, 950 F.2d 85, 88 (2d Cir. 1985) (“[A] defendant must  
15 introduce some evidence contrary to the presumed fact in order to rebut the presumption.”).  
16 Although the presumption shifts the burden of production to the defendant, the burden of  
17 persuasion remains with the government. *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir.  
18 2008). Finally, when a defendant rebuts the presumption, “the presumption ‘remains in the case  
19 as an evidentiary finding militating against release, to be weighed along with other evidence  
20 relevant to factors listed in § 3142(g).’” *Id.* (quoting *United States v. Dominguez*, 783 F.2d 702,  
21 707 (7th Cir. 1986)).

### 22 **C. Detention Standard**

23       The Act requires that a court release a criminal defendant on personal recognizance or on  
24 an unsecured appearance bond before trial unless there is a determination that such release “will

1 not reasonably assure the appearance of the person as required or will endanger the safety of any  
2 other person or the community.” 18 U.S.C. § 3142(b). This default requirement is in accord with  
3 the principle that “[i]n our society, liberty is the norm, and detention prior to trial . . . is the  
4 carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Ninth  
5 Circuit cautions that “[o]nly in rare cases should release be denied.” *United States v. Santos–*  
6 *Flores*, 794 F.3d 1088, 1090 (9th Cir. 2015) (citing *United States v. Motamedi*, 767 F.2d 1403,  
7 1405 (9th Cir. 1985)). Further, “doubts regarding the propriety of release are to be resolved in  
8 favor of the defendant.” *Id.* If a court determines that such release will not reasonably assure the  
9 defendant’s appearance and the safety of the community, the court must impose “the least  
10 restrictive further condition, or combination of conditions,” that will reasonably assure these  
11 goals. 18 U.S.C. § 3142(c)(1)(B). The Act only requires detention where a court finds that no  
12 such condition or combination or conditions can do so. 18 U.S.C. § 3142(e)(1).

13       If the Government moves for detention pursuant to 18 U.S.C. § 3142(f) and a defendant  
14 is eligible for a detention hearing, then the court must determine whether there are conditions of  
15 release that reasonably assure two goals: “the appearance of the defendant as required” and “the  
16 safety of any other person and the community.” 18 U.S.C. § 3142(g). In making this  
17 determination, a court considers the following factors: (1) the nature and circumstances of the  
18 offense charged, including whether the offense involves a controlled substance; (2) the weight of  
19 the evidence against the defendant; (3) the history and characteristics of the defendant, including  
20 the defendant’s character, physical and mental condition, family ties, employment, financial  
21 resources, length of residence in the community, community ties, past conduct, history relating  
22 to drug or alcohol abuse, criminal history, and record concerning appearance at court  
23 proceedings; and (4) the nature and seriousness of the danger to any person or the community  
24 that would be posed by the defendant’s release. *Id.*

1 To obtain pretrial detention, the government bears the burden of showing by a  
2 preponderance of the evidence that there are no conditions that will reasonably assure the  
3 defendant's appearance as required, and by clear and convincing evidence that there are no  
4 conditions that will reasonably assure the safety of any other person and the community. *See* 18  
5 U.S.C. § 3142(e)(1); *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991).

### 6 **III. DISCUSSION**

7 Mr. Anders argues that "the government has not demonstrated that he poses either an  
8 unmanageable risk of flight or danger to the community." Dkt. No. 19 at 1. The Government  
9 argues primarily that Mr. Anders cannot be safely supervised on release. Dkt. No. 21 at 1–2. To  
10 make its determination, the Court first evaluates the presumption of detention, including whether  
11 the presumption has been successfully rebutted, and then considers the factors enumerated in  
12 18 U.S.C. § 3142(g).

#### 13 **A. Rebuttal of the Presumption of Detention**

14 Here, the presumption of detention is triggered because Mr. Anders is charged by  
15 indictment with one count of Production of Child Pornography, 18 U.S.C. §§ 2251(a) and 2251(e).  
16 *See* 18 U.S.C. § 3142(e)(3)(E); *Smith*, 79 F.3d at 1210. The magistrate judge found that "Mr.  
17 Anders overcame the presumption [of detention] based on his strong community ties, stable  
18 employment, and stable housing." Dkt. No. 15 at 1. The Court agrees that Mr. Anders has  
19 overcome the presumption.

#### 20 **1. Risk of Nonappearance**

21 Mr. Anders has provided evidence to rebut the presumption as to the risk of  
22 nonappearance. When informed of the indictment in this matter, Mr. Anders did not flee but  
23  
24

1 instead voluntarily surrendered himself and turned in his passport.<sup>1</sup> Dkt. No. 19 at 3. Although  
2 Mr. Anders faces extremely serious charges in state court (Dkt. No. 7 at 4–6), he was released on  
3 bond in December 2022, left the United States multiple times since that release, and returned  
4 every time. Dkt. No. 19 at 8.

5 Mr. Anders also has strong family and community ties. He was born in Spokane,  
6 Washington. Dkt. No. 7 at 2. He has lived in Washington State since 1984, except for four years  
7 of college in California, and has lived in the Seattle area since 1992. Dkt. No. 7 at 2. His mother  
8 and two stepbrothers live in Spokane. *Id.* Prior to this matter, Mr. Anders was employed at an  
9 information technology firm and has worked for various corporations in technology sales since  
10 1992. *Id.* at 3. Mr. Anders also co-owns a house and a condo in Seattle. *Id.*

11 Finally, the Government in its brief focuses almost exclusively on the safety of the  
12 community. *See* Dkt. No. 21. The only facts raised by the Government that addresses  
13 nonappearance are Mr. Anders’s co-ownership of property in Colombia and the existence of two  
14 pending state matters. Audiotape: Detention Hearing, Dkt. No. 13, at 5:43–6:05 (on file with the  
15 Court) (the “Audiotape”); Dkt. No. 21 at 7. As noted above, Mr. Anders appears to have traveled  
16 to Colombia while out on a serious state matter and still returned to the United States. Dkt.  
17 No. 19 at 8. Further, the Court will order that Mr. Anders surrender his passport.

## 18 **2. Safety of the Community**

19 While safety is the primary concern in this matter, Mr. Anders’s burden of production is  
20 fairly low, and he has provided “some evidence” to rebut the presumption as to safety. *Jessup*,  
21 757 F.2d at 384. Mr. Anders is 53 years old and has no criminal history prior to the alleged  
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23 <sup>1</sup> Counsel states that the passport was “returned to the prosecutor pending hearing.” Dkt. No. 19 at 3. At the motion  
24 hearing, counsel also stated that Mr. Anders’s mother now has the passport, as Mr. Anders was detained and the  
passport was not ordered to be surrendered. Dkt. No. 28.

1 incidents in 2022 that gave rise to this matter and two pending state matters. Dkt. No. 7 at 4–6.  
2 He maintained steady employment prior to detention. *Id.* at 3. And he had been out on bond for  
3 his state case with little supervision since December 2022 with no substantive allegations of  
4 dangerous conduct. To be sure, the Government raised concerns about alleged incidents of  
5 prohibited conduct involving Christmas gifts for Mr. Anders’s children, allegations that Mr.  
6 Anders was near his children’s school, and the location of Mr. Anders’s apartment. Audiotape, at  
7 5:12–5:42; Dkt. No. 21 at 5–6. But Mr. Anders addressed these alleged incidents to the Court’s  
8 satisfaction, (Audiotape, at 8:35–13:25; Dkt. No. 19 at 5–6), and the Court may impose further  
9 restrictions on the conditions of his release to safeguard any remaining concerns about  
10 community safety.

11 Therefore, the Court finds Mr. Anders rebuts the presumption as to both nonappearance  
12 and safety. However, the presumption remains as an evidentiary finding in favor of detention.  
13 *See Hir*, 517 F.3d at 1086. The Court now turns to the evidence relevant to factors listed in  
14 § 3142(g) and will weigh the presumption along with the factors.

## 15 **B. The § 3142(g) Factors**

### 16 **1. Nature and Seriousness of the Offenses Charged**

17 This factor instructs the court to examine the nature and circumstances of the offense  
18 charged and, in particular, whether the offense involves a minor victim. The seriousness of the  
19 offenses charged are demonstrated by the consequences for them: Mr. Anders faces a mandatory  
20 minimum sentence of 15 years of imprisonment if convicted of Count 1 and a potential term of  
21 imprisonment of up to 20 years if convicted of Count 2. *See* 18 U.S.C. §§ 2251(e), 2252(b)(2).  
22 The allegations, if true, are disturbing and inflict serious harm on some of our most vulnerable  
23 citizens: children. *See* Audiotape, at 2:45–4:15; Dkt. No. 21 at 2–3.



1 Therefore, the Court finds that the nature and seriousness of the offenses charged weighs  
2 in favor of detention.

### 3 **2. Weight of the Evidence**

4 The Government describes the weight of the evidence in this case as “strong.” Dkt. No.  
5 21 at 7. To that end, the Government provides an excerpt of a Seattle Police Department “Case  
6 Investigation Report” that provides significant evidence as well as corroboration that Mr. Anders  
7 committed the crimes for which he has been indicted.<sup>2</sup> See Dkt. No. 21-1. That evidence includes  
8 video recordings recovered from Mr. Anders’s personal electronic devices. Dkt. No. 21 at 7.  
9 Despite all the evidence the Government has and may ultimately bring to bear in this case,  
10 Mr. Anders is presumed innocent before trial, and nothing in the Court’s analysis may be  
11 construed as modifying or limiting that presumption. 18 U.S.C. § 3142(j). Further, the Ninth  
12 Circuit has repeatedly declared that the weight of the evidence is the least important factor, and  
13 the statute neither requires nor permits a pretrial determination of guilt. *Gebro*, 948 F.2d at 1121;  
14 *see also Hir*, 517 F.3d at 1090; *United States v. Winsor*, 785 F.2d 755, 757 (9th Cir. 1986);  
15 *Motamedi*, 767 F.2d at 1408.

16 Therefore, while the Court finds that the weight of the evidence weighs in favor of  
17 detention, it treats this factor as the least important.

### 18 **3. The History and Characteristics of Mr. Anders**

19 As discussed at the motion hearing, the Court has reservations regarding Mr. Anders’s  
20 trustworthiness and credibility given the apparent exaggerations and/or misrepresentations made  
21 in his motion to the Court regarding his military service, his supervisory responsibilities at his  
22 former job, and the amount of the contributions he was making to the expenses for his family.

23 \_\_\_\_\_  
24 <sup>2</sup> The Government also provides a “Statement of Investigating Officer/Affidavit of Facts” that details serious  
allegations in a pending state matter involving his wife. See Dkt. No. 21-2.

1 See Dkt. No. 24 at 3–6 (reporting the results of Pretrial Services’ investigation of these issues).  
2 These reservations persist despite counsel’s explanations at the hearing. However, the Court  
3 acknowledges that Mr. Anders has no prior criminal history and has complied with conditions of  
4 release during the pendency of the state case against him. *See supra*, Section III.A.2. Mr. Anders  
5 also has strong community ties and a history of stable housing and employment. *See supra*,  
6 Section III.A.1. And he has no reported history of drug or alcohol abuse. Dkt. No. 7 at 4.

7 Therefore, the Court finds that the history and characteristics of Mr. Anders weighs  
8 narrowly in favor of release. However, Mr. Anders is cautioned that this decision was a very  
9 close one. The Court will not tolerate any further exaggerations or misrepresentations from either  
10 Mr. Anders or his counsel.

#### 11 **4. Danger to Any Person or the Community**

12 The Government devotes the bulk of its arguments to describing the charged offenses and  
13 highlighting the danger to the community posed by Mr. Anders’s release. *See* Dkt. No. 21 at 1–2,  
14 8. Although the Court shares the Government’s concerns, the Court does not believe that  
15 detention is required to reasonably assure community safety. Notably, since Mr. Anders was  
16 approved to reside at the House of Mercy in Spokane, Pretrial Services has recommended that  
17 Mr. Anders be released with conditions. *See* Dkt. Nos. 27, 30. This residence avoids the dangers  
18 associated with other addresses that Pretrial Services previously considered and rejected. *See*  
19 Dkt. No. 12. The House of Mercy is approved by the Washington State Department of  
20 Corrections, and supervision officers are able to visit anytime. Dkt. No. 27 at 2. The program  
21 claims a record of low recidivism and is experienced with pretrial supervision. *See* Dkt. No. 29 at  
22 8 (letter from program director). The program also includes a live-in house manager and has the  
23 capability to monitor internet usage as requested. *Id.* at 13 (letter from area manager). Further,  
24 the United States Probation Office in the Eastern District of Washington reports that there should

1 be no issues with location monitoring equipment at this address and that they should be able to  
2 monitor Mr. Anders's computer usage. Dkt. No. 30 at 2.

3 In its supplemental brief, the Government imagines the ways that Mr. Anders *might*  
4 circumvent supervision and computer monitoring, based on the examples of other defendants and  
5 examples from other House of Mercy locations. *See* Dkt. No. 31. These claims are speculative  
6 and could be applied to anyone facing the same charges. No set of release conditions is  
7 foolproof. Further, the Act requires only "reasonable assurance," and not a "guarantee." *United*  
8 *States v. Orta*, 760 F.2d 887, 891–92 (8th Cir. 1985); *see United States v. Djoko*, No. C19-0146,  
9 2019 WL 4849537, at \*5 (W.D. Wash. Oct. 1, 2019) ("While these conditions [of release] cannot  
10 guarantee [defendant's] appearance, the standard under § 3142(g) is reasonable assurance.");  
11 *United States v. Chen*, 820 F. Supp. 1205, 1208 (N.D. Cal. 1992) (noting that "Section 3142 does  
12 not seek ironclad guarantees"). The Court is satisfied that location monitoring with home  
13 detention, in addition to the numerous other conditions recommended by Pretrial Services, will  
14 reasonably assure both Mr. Anders's appearance and community safety.

15 Therefore, the Court finds that consideration of danger to any person or the community  
16 weighs narrowly in favor of release.

17 For the reasons explained above, the Court finds that the Government has not met its  
18 burden by a preponderance of the evidence that there is no combination of conditions of release  
19 that will reasonably assure Mr. Anders's appearance.

20 The Court also finds that the Government has not met its burden by clear and convincing  
21 evidence that there is no combination of conditions of release that will reasonably assure the  
22 safety of any other person and the community.

**IV. CONCLUSION**

Accordingly, Mr. Anders' Motion to Revoke the Detention Order (Dkt. No. 19) is GRANTED and the Detention Order (Dkt. No. 15) is REVOKED. The Court concludes that the conditions recommended by Pretrial Services along with the additional conditions proposed by Mr. Anders regarding computer use will reasonably assure his appearance and the safety of any other person and the community.

Therefore, the Court REFERS the Motion to the Magistrate Judge on duty for the purpose of releasing Mr. Anders and issuing an appearance bond that shall include the following:

- (1) The conditions recommended in the Fourth Supplemental Pretrial Report of the Western District of Washington (Dkt. No. 30 at 5–6).
- (2) Mr. Anders will only be allowed to use a computer for employment purposes or for communicating with legal counsel or medical or mental health providers. Any computer must be approved by Pretrial Services. Covenant Eyes shall be installed on any computer Mr. Anders uses and shall be linked to his Pretrial Services supervising officer.
- (3) Mr. Anders shall be released to the House of Mercy in Spokane and shall maintain residence there while this matter is pending.
- (4) Any other conditions the Magistrate Judge or Pretrial Services for the Western District of Washington deem appropriate.

Dated this 15th day of June 2023.

  
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Tana Lin  
United States District Judge